

Criminal Appeal NO. 95-DB of 1998.

**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

...

Date of Decision: October 16, 2007.

Mulkh Raj alias Bhutto and another ...Appellant

VERSUS

State of Punjab ...Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr. J.B.S. Gill, Advocate,
for the appellants.

Mr. D.S. Brar, Deputy Advocate General,
Punjab.

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MOHINDER PAL, J.

Appellants Mulkh Raj alias Bhutto and Kamaljit in this appeal have challenged their conviction under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to

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as 'the Code') and sentence of rigorous imprisonment for life and fine of Rs.2000/- and in default thereof to undergo further rigorous imprisonment for three months recorded by the learned Sessions Judge, Hoshiarpur vide judgment and sentence order dated December 05, 1997.

As per facts of this case, Chhinda alias Sohan, brother of Jit Ram (deceased) made a statement before the police that they were four brothers and Jit Ram was the eldest. He was a truck Driver. Jit Ram was married to Kamaljit (appellant). They were living separately with their four children. Being Driver, Jit Ram used to remain away from home for many days. In his absence, Kamaljit had developed illicit relations with Mulkh Raj (appellant). Jit Ram objected to these relations, but Kamaljit did not bother. The matter was once reported to the Panchayat. For the last about 10/12 days prior to the date of occurrence, Jit Ram had come to the village and was staying in his house.

On January 02, 1996, at about 9 A.M, Chhinda (complainant) came to know that the dead body of Jit Ram was lying on the outer 'Phirni' of the village. He along with his brothers went to the spot and thereafter informed Kailash Chander, Sarpanch. Hans Raj, Chaukidar, was sent to the Police Station to give information about the incident while all the brothers remained near the dead body.

Kamaljit was asked about the whereabouts of Jit Ram, but she failed to give a satisfactory reply. According to

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complainant Chhinda, Jit Ram was killed by Mulkh Raj and Kamaljit (appellants) by strangulation.

After registration of the case and completion of investigation, challan was presented in the Court and the case was committed by the Court of Chief Judicial Magistrate, Hoshiarpur, on March 30, 1996.

In order to succeed, the prosecution examined as many as fourteen witnesses.

P.W.1 Vijay Kumar Sharma, Tehsildar-cum-Executive Magistrate stated that both the accused were produced before him and application (Exhibit P.A) was made to obtain their finger prints and moulds.

P.W.2 Dr. Krishan Kumar, Senior Medical Officer, Civil Hospital, Hoshiarpur, conducted post mortem examination on the dead body of Jit Ram on January 03, 1996 at 11 A.M and recorded the following injuries:-

"1. Multiple abrasions brownish in colour of varying sizes 1 cm x ½ cm to 2 cm and ½ cm over front and sides of lower part of right knee.

2. Multiple reddish brown abrasions of varying sizes 1 cm x ½ cm to 1-1/2 cm x 1 cm in front and sides of left knee region.

3. Reddish brown abrasions 2 in number 2 cm x 1 cm of size over the upper part

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of lateral aspect of right thigh.

4. Reddish abrasions 4 in number of size 1-1/2 cm x 1/2 cm to 1 cm x 1/2 cm over the dorsum of base of left thumb, hand and wrist.

5. Reddish abrasion 1/2 cm x 1/2 cm over the back of right wrist.

6. Lacerated wound transverse 2 cm x .2 cm and muscle deep over outer half of left eye brow. Clotted blood was present. Hair were matted.

7. Reddish abrasion 1/2 cm x 1/2 cm over the left cheek.

8. Reddish abrasion 2 cm x 1 cm over the posterior lateral aspect of middle of right thigh.

9. Reddish abrasion 2 cm x 2 cm over the back of lower part of left buttock.

10. Three reddish abrasions 4 cm x 2 cm to 3 x 2 cm over the lower aspect of upper part of left thigh on its lateral aspect.

11. Reddish contusion 5 x 2 cm over the lower part of nose with vertical reddish abrasions 1-1/2 cm x .25 cm over outer aspect of ala of nose lying vertically.

12. Reddish brownish bruises disc shaped over the left side of middle part of the

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neck 2 cm in diameter and 4 cm long, oblique with a linear mark on its top and reddish brown bruise 4 cm x 4 cm with four linear marks over the right side of neck in its middle part.

According to the Doctor, the cause of death was asphyxia due to strangulation, which was sufficient to cause death in the ordinary course of nature.

P.W.3 Sub Inspector Gurdeep Singh, Finger Prints Expert, visited the place of occurrence, collected empty bottle along with other articles and lifted the finger prints and foot moulds from the place of occurrence.

P.W.4 Karamjit Singh, Patwari proved the scaled site plan (Exhibit P.L) of the spot and stated that it was prepared at the instance of Sub Inspector Dilbagh Singh, Investigating Officer.

P.W.5 Kewal Krishan, aged about 14 years, is son of the deceased. He has been examined to prove the illicit relations between the accused.

P.W.6 Chhinda alias Sohan is author of the First Information Report.

P.W.7 Ujagar Singh is Ex-Sarpanch of the Village, who had allegedly seen the accused present near his fields on January 02, 1996, when he was irrigating the fields.

P.W.8 Ashwani Kumar, Moharrir Head Constable, P.W.9

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Harjinder Singh, Head Constable, P.W.10 Baljinder Singh and P.W.11 Mehar Singh, Constable, are formal witnesses, who have produced the affidavits in Court.

P.W.12 Kailash Chander, Sarpanch, is the witness regarding collection of articles from the place of occurrence. The accused allegedly made extra judicial confessions before him on January 03, 1996. On January 05, 1996, the accused requested him to produce them before the police and he did so.

P.W.13 Palwinder Kumar Constable has proved the affidavit Exhibit P.U.

P.W.14 Dilbagh Singh, Sub Inspector, investigated the case and recorded the statements of the P.Ws.

Reports of the Finger Print Bureau were produced as Exhibits P.Y and P.Z and report of the Director, Forensic Science Laboratory as Exhibit P.Z/1.

Some of the witnesses were given up by the prosecution being unnecessary.

After closure of the prosecution evidence, statements of the accused were recorded under Section 313 of the Code of Criminal Procedure wherein they pleaded innocence. Kamaljit accused stated that she has been implicated at the instance of complainant Chhinda because earlier her husband was residing with his brothers and their families but later on they constructed their separate house. The brothers of Jit Ram were nursing a grudge against Kamaljit on that account.

The learned trial Court while taking into account the

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evidence of P.W.5 Kewal Krishan, a child witness, P.W.6 Chhinda alias Sohan (complainant), P.W.7 Ujagar Singh, Ex-Sarpanch, and P.W.12 Kailash Chander, Sarpanch, came to conclude that accused Kamaljit was having illicit relations with accused Mulkh Raj, which according to the trial Court, was a motive for eliminating Jit Ram, who was coming in their way. The trial Court also took into consideration evidence of P.W.2 Dr. Krishan Kumar, Senior Medical Officer, Civil Hospital, Hoshiarpur, who conducted post mortem examination on the dead body of Jit Ram and reached to the conclusion that Jit Ram died of asphyxia due to strangulation. Finally, the trial Court took into account the evidence of P.W.1 Vijay Kumar Sharma, Tehsildar-cum- Executive Magistrate, in whose presence foot moulds and finger prints of the accused persons were taken, which were compared with the evidence collected from the place of occurrence and proved by the witnesses examined in the Court.

Learned counsel for the appellants contended that the evidence of Kewal Krishan (P.W.5) regarding illicit relations was liable to be ignored as it was an evidence of a child witness, who was residing with the complainant and was tutored before deposing in the Court. Further, according to him, the evidence of Ujagar Singh (P.W.7), the witness of last seen, who was irrigating his fields and had allegedly seen the accused in the company of the deceased, was also liable to be ignored in view of the fact that the fields were not irrigated when the dead body was recovered by the police. It has also been argued that the

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trial Court committed an error while relying upon the evidence regarding lifting of finger prints from the articles recovered and foot moulds from the place of occurrence as almost all the residents of the village had visited the place of occurrence before this evidence was collected by the police. Finally, learned counsel for the appellants argued that it was highly improbable that both the accused would make confessions before Kailash Chander (P.W.12) on January 03, 1996 and would then request him on January 15, 1996, to produce them before the police.

We have given our thoughtful consideration to the contentions raised by learned counsel for the appellants.

Admittedly, this is a case of circumstantial evidence where prosecution has to establish all its allegations beyond any reasonable doubt. The prosecution has tried to connect the accused with the offence by establishing illicit relations between the accused. The prosecution has relied upon the evidence of Ujagar Singh (P.W.7) to prove that both the accused were seen together near the place of occurrence on the day of incident in the early hours of morning. The evidence regarding extra judicial confession has also been highlighted. The moulds which were taken from the place of occurrence and the test moulds tallied with that of both the accused, is another set of evidence relied upon by the prosecution. Finally, the conduct of Kamaljit in not reporting the matter to the police about the missing of her husband, raised suspicion in the mind of Chhinda (complainant), which activated the police to launch prosecution against the

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accused.

The evidence of P.W.5 Kewal Krishan, a child witness, has to be weighed in a golden scale in order to hold the accused guilty because such witnesses are generally prone to tutoring. In this case P.W.5 Kewal Krishan has been examined to establish illicit relationship of the accused. When put to cross-examination, he admitted that five/six days prior to the date of occurrence, he had gone to the house of his maternal uncle and came back to the house of his grand parents only on the date of occurrence; meaning thereby he was not present with his parents prior to the date of occurrence or at the time of occurrence. So, he cannot tell anything about the altercation or quarrel alleged to have taken place between his parents i.e Jit Ram and Kamaljit (appellant) on account of visit of Mulkh Raj (appellant) in their house, which was objected by his father Jit Ram. He has also admitted that his uncle Chhinda alias Sohan and his other uncles guarded him so that he may not see the relatives of his mother. He was escorted by his uncles while coming to the Court, which shows that the witness was under complete control of the complainant party till he appeared in the Court. It has also come in the evidence that Kamaljit was blessed with three other children aged about ten years, seven years and two years, who were present in the house on the night of occurrence. Out of them, the children aged about ten years and seven years could have been arrayed as witnesses and examined in the Court to give

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first hand information as to what happened immediately before the disappearance of Jit Ram, whose body was found on the 'Phirni' of the village. However, it was not done. The prosecution has further failed to explore the relationship between Mulkh Raj and Kamaljit as P.W.5 Kewal Krishan has simply deposed regarding illicit relations and objections by deceased Jit Ram. The other witness regarding illicit relations is in the form of P.W.6 Chhinda alias Sohan, the author of the First Information Report, who has deposed that the matter regarding illicit relations was referred to the village Panchayat about six months before the date of occurrence. However, these oral averments cannot be attached much importance in the absence of documentary evidence to prove this fact. P.W.12 Kailash Chander, Sarpanch, also failed to give explanation regarding non-availability of documentary evidence to show that the matter had reached to the village Panchayat.

P.W.7 Ujagar Singh is witness of the last seen as according to him at about 4 A.M on the date of occurrence, he heard a noise from the side of 'Ghori' and he put on his torch and saw Mulkh Raj and Kamaljit coming from the side of 'Ghori'. Evidence of this witness cannot be relied upon as he had made improvements in his statement recorded under Section 161 of the Code of Criminal Procedure. In the said statement, Ujagar Singh stated that he was coming near the 'abadi' of the village when he spotted the accused persons with the torch light though the area was engulfed by a thick fog. Further,

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according to him, his fields were wet and he was irrigating the same at that time, but as per cross-examination of P.W.14 Dilbagh Singh, Sub Inspector, the fields were dry when he reached the spot. Otherwise also, both P.W.7 Ujagar Singh and P.W.12 Kailash Chander were aware regarding the death of Jit Ram much prior to the arrival of the police in the village or registration of the First Information Report. However, the facts stated in the Court were not recorded in the statement recorded under Section 161 of the Code of Criminal Procedure.

The other set of evidence in the form of moulds lifted from the place of occurrence also does not help in advancing the case of the prosecution as it has been admitted by almost all the witnesses examined to prove the occurrence that a number of persons had gathered at the place from where the dead body was recovered. It is difficult to believe that the moulds lifted from the place of occurrence remained intact till the police reached the spot. Similarly, many persons had visited the house of Kamaljit after the occurrence and it is highly improbable that the articles recovered from the place of occurrence remained intact till the same were taken into possession by the Investigating Officer. P.W.3 Sub Inspector Gurdeep Singh, Finger Prints Expert, who had lifted the foot moulds and finger prints, has also admitted in his cross-examination that there were a number of persons present in the house at the time when he reached there and the utensils were lying underneath a cot. However, he failed to confirm from

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the Investigating Officer if the scene of crime had been preserved before his arrival. The articles were sealed in his presence, but he did not affix his seal on these articles. These discrepancies in the manner of investigation create a doubt regarding lifting finger prints and foot moulds from the place of occurrence.

In view of the aforesaid discussion, it being not a case of direct evidence, the prosecution had to rely upon only the circumstantial evidence, which in this case is not sufficient to connect the accused with the offence. The chain of circumstances in this case is, thus, incomplete. The prosecution has not been able to prove the charges against the appellants beyond reasonable doubt.

Consequently, this appeal is allowed and the impugned judgment and sentence order, both dated December 05, 1997 passed by learned Sessions Judge, Hoshiarpur, are set aside. Appellants Mulkh Raj and Kamaljit are acquitted after giving them the benefit of doubt.

(ASHUTOSH MOHUNTA)
JUDGE

October 16, 2007.
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(MOHINDER PAL)
JUDGE